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15 *Consumer Products, L.L.C., and*

16 *Toshiba America Electronic Components, Inc.*

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 (SAN FRANCISCO DIVISION)

20 IN RE: CATHODE RAY TUBE (CRT)
21 ANTITRUST LITIGATION

22 Case No. 07-5944 SC
23 MDL No. 1917

24 This Document Relates to:

25 *Costco Wholesale Corporation v. Hitachi, Ltd., et*
26 *al., No. 11-cv-06397;*

27 **THE TOSHIBA DEFENDANTS'
28 JOINDER TO DEFENDANTS'
JOINT MOTION FOR
PARTIAL SUMMARY
JUDGMENT AGAINST
CERTAIN DIRECT ACTION
PLAINTIFFS ON DUE
PROCESS GROUNDS**

29 **REDACTED COPY OF DOCUMENT SOUGHT TO BE SEALED**

30 THE TOSHIBA DEFENDANTS' JOINDER
31 TO DEFENDANTS' JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT
32 AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS

33 Case No. 07-5944 SC
34 MDL No. 1917

1 Defendants Toshiba Corporation, Toshiba America Electronic Components, Inc.
2 (“TAEC”), Toshiba America Information Systems, Inc. (“TAIS”), Toshiba America
3 Consumer Products, L.L.C. (“TACP”), and Toshiba America, Inc. (“TAI”) (collectively, the
4 “Toshiba Defendants”) hereby join Defendants’ Joint Motion for Partial Summary Judgment
5 Against Certain Direct Action Plaintiffs on Due Process Grounds (the “Joint Motion”), which
6 was filed on November 7, 2014, by LG Electronics, Inc., LG Electronics, U.S.A., Inc., LG
7 Electronics Taiwan Taipei Co., Ltd., Samsung SDI Co., Ltd., Samsung SDI America, Inc.,
8 Samsung SDI Mexico S.A. De C.V., Samsung SDI Brasil LTDA, Shenshen Samsung SDI
9 Co., Ltd., Tianjin Samsung SDI Co., Ltd., Hitachi Ltd., Hitachi Displays, Ltd., Hitachi
10 America, Ltd., Hitachi Asia, Ltd., Hitachi Electronic Devices (USA), Inc.; Mitsubishi
11 Electronic Corporation, Mitsubishi Electronic Visual Solutions America, Inc., Mitsubishi
12 Electric & Electronics USA, Inc., and Technicolor SA (f/k/a Thomson SA), Technicolor
13 USA, Inc. (f/k/a Thomson Consumer Electronics, Inc.) (collectively, the “Moving
14 Defendants”).

17 The Toshiba Defendants are in the same position with respect to due process as the
18 Moving Defendants for the following state-law claims:

19 1. Costco’s Second, Fourth, Fifth, and Sixth Claims for Relief under Arizona and
20 Florida state law.

22 The relevant factual allegations addressed in the Joint Motion are similar to the factual
23 allegations against the Toshiba Defendants, and the legal arguments advanced in the Joint
24 Motion apply with equal force to the Toshiba Defendants. Like the Moving Defendants, the
25 Toshiba Defendants lack sufficient business contacts with the states at issue.

26 It is undisputed that none of the Toshiba Defendants maintained their headquarters,
27 principal places of business, manufacturing facilities, or any other material business presence

28 THE TOSHIBA DEFENDANTS’ JOINDER
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1 in Arizona or Florida (collectively, the “Relevant States”). This conclusion is demonstrated
2 by the following undisputed facts:

- 3 • Toshiba Corporation is a Japanese company with its principal place of business
4 located in Japan. *See* Target Second Amended Complaint (“SAC”) ¶54; Costco First
5 Amended Complaint (“FAC”) ¶51; Sears Kmart SAC ¶58; Declaration of Lucius B.
6 Lau, dated November 7, 2014 (“Lau Decl.”), Ex. 1 (Rule 30(b)(6) Dep. Tr. of Toshiba
7 Corporation (Koji Kurosawa) at 12:11-15; 30:17-19).
- 8 • TAI is a Delaware company with its principal place of business located in New York.
9 *See* Target SAC ¶55; Costco FAC ¶52; Sears Kmart SAC ¶59.
- 10 • TAIS is a California corporation with its principal place of business located in
11 California. *See* Target SAC ¶59; Costco FAC ¶55; Sears Kmart SAC ¶62; Lau Decl.,
12 Ex. 2 (Rule 30(b)(6) Dep. Tr. of TACP and TAIS (Richard Huber) at 63:19-21).
- 13 • TACP was headquartered in New Jersey and had its principal place of business in
14 Lebanon, Tennessee before it merged into TAIS. *See* Target SAC ¶56; Costco FAC
15 ¶53; Sears Kmart SAC ¶60; Lau Decl., Ex. 2 (Rule 30(b)(6) Dep. Tr. of TACP and
16 TAIS (Richard Huber) at 13:12-22, 68:8-12); Lau Decl., Ex. 3 (Rule 30(b)(6) Dep. Tr.
17 of TACP and Toshiba Corporation (Yoshiaki Uchiyama) at 12:3-7).
- 18 • TAEC is a California corporation with its principal place of business located in
19 California. *See* Target SAC ¶57; Costco FAC ¶54; Sears Kmart SAC ¶61; Lau Decl.,
20 Ex. 4 (Rule 30(b)(6) Dep. Tr. of TAEC (Jay Heinecke) at 19:12-15).
- 21 • During the Relevant Period, all of the Toshiba Defendants’ manufacturing facilities
22 were located outside of the Relevant States. Lau Decl., Ex. 4 (Rule 30(b)(6) Dep. Tr.
23 of TAEC (Jay Heinecke) at 32:4-16; 78:1-6); Lau Decl., Ex. 2 (Rule 30(b)(6) Dep. Tr.
24 of TACP and TAIS (Richard Huber) at 68:8-18); Lau Decl., Ex. 3 (Rule 30(b)(6) Dep.
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THE TOSHIBA DEFENDANTS’ JOINDER
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AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS

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1 Tr. TACP and Toshiba Corporation (Yoshiaki Uchiyama) at 47:4-8); Lau Decl., Ex. 1
2 (Rule 30(b)(6) Dep Tr. of Toshiba Corporation (Koji Kurosawa) at 38:9-11; 58:9-16).
3 The Plaintiffs fail to identify any alleged anticompetitive conduct by any Toshiba
4 Defendant in Arizona or Florida. *See, e.g.*, CompuCom's Objections and Responses to LG
5 Electronics U.S.A, Inc. and Panasonic Corporation's Second Set of Interrogatories, Response
6 to Interrogatory No. 10 (stating that “[e]vidence supporting defendants' and their co-
7 conspirators' price fixing includes documents produced by all parties and the testimony of
8 witnesses,” citing various expert reports and discovery responses by others, and identifying
9 “Exhibit A to interrogatory responses submitted by the Dell Plaintiffs on July 14, 2014,
10 including all revisions and supplementations thereto”). The most recent supplement of this
11 “Exhibit A” is attached as Exhibit A to the declaration of Laura K. Lin accompanying the
12 Joint Motion (“Exhibit A”). These states lack even slight or casual contact with the Toshiba
13 Defendants' purported anticompetitive conduct, which allegedly occurred exclusively in other
14 states and other countries.
15

16 Plaintiffs' Exhibit A [REDACTED]

17 [REDACTED] See Exhibit A (line 335). [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] The
21 exchange of general market information is necessary for businesses to remain competitive.
22 See *Wilcox v. First Interstate Bank*, 815 F. 2d 522, 527 (9th Cir. 1987) (“An exchange of
23 price information which constitutes reasonable business behavior is not an illegal
24 agreement.”). Moreover, that single contact – out of the more than two thousand alleged
25 contacts at issue – is too “slight and casual” to satisfy due process. *AT&T Mobility LLC v. AU*
26 *Optronics Corp.*, 707 F.3d 1107, 1113 (9th Cir. 2013).
27
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THE TOSHIBA DEFENDANTS' JOINDER
TO DEFENDANTS' JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS

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1 Accordingly, for the same reasons as those set forth in the Joint Motion, the Toshiba
2 Defendants respectfully request that this Court grant partial summary judgment of the above-
3 listed state-law claims, brought by Costco against the Toshiba Defendants.
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THE TOSHIBA DEFENDANTS' JOINDER
TO DEFENDANTS' JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS

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1
2 Dated: November 7, 2014
3

Respectfully submitted,

WHITE & CASE LLP

4 By: /s/ Lucius B. Lau
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16 Corporation, Toshiba America, Inc.,
17 Toshiba America Information Systems, Inc.,
18 Toshiba America Consumer Products,
19 L.L.C., and Toshiba America Electronic
20 Components, Inc.*

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28 THE TOSHIBA DEFENDANTS' JOINDER

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AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS

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CERTIFICATE OF SERVICE

On November 7, 2014, I caused a copy of “THE TOSHIBA DEFENDANTS’ JOINDER TO DEFENDANTS’ JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 2, 2008.

/s/ *Lucius B. Lau*

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THE TOSHIBA DEFENDANTS' JOINDER

**TO DEFENDANTS' JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS**

Case No. 07-5944 SC
MDL No. 1917

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

Costco Wholesale Corporation v. Hitachi, Ltd., et al.,
Individual Case No. 11-cv-06397

**[PROPOSED] ORDER GRANTING
THE TOSHIBA DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST
CERTAIN DIRECT ACTION
PLAINTIFFS ON DUE PROCESS
GROUND**

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

**[PROPOSED] ORDER GRANTING
THE TOSHIBA DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS**

Case No. 07-5944-SC
MDL No. 1917

Upon consideration of the Toshiba Defendants' Joinder to Defendants' Joint Motion for Partial Summary Judgment Against Certain Direct Action Plaintiffs On Due Process Grounds, and any responses and replies thereto, it is hereby:

ORDERED that the motion is GRANTED; and it is further

ORDERED that Costco's Second, Fourth, Fifth, and Sixth Claims for Relief under Arizona and Florida state law as they pertain to the Toshiba Defendants are dismissed with prejudice.

IT IS SO ORDERED.

Dated:

HONORABLE SAMUEL CONTI
UNITED STATES DISTRICT JUDGE

**[PROPOSED] ORDER GRANTING
THE TOSHIBA DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS**

ACTION PLAINTIFFS
Case No. 07-5944-SC
MDL No. 1917

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PARIS (—), 1911, 1912

Counsel to Defendants Toshiba Corporation

Toshiba America, Inc.,

Toshiba America Consumer Products, LLC,

Toshiba America Information Systems, Inc.,

and Toshiba America Electronic Components, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

**IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION**

Case No. 07-5944 SC
MDL No. 1917

This Document Relates To:

Costco Wholesale Corporation v. Hitachi, Ltd., et al., No. 11-cv-06397.

**DECLARATION OF
LUCIUS B. LAU IN SUPPORT OF
THE TOSHIBA DEFENDANTS'
JOINDER TO DEFENDANTS'
JOINT MOTION FOR PARTIAL
SUMMARY JUDGMENT
AGAINST CERTAIN DIRECT
ACTION PLAINTIFFS ON DUE
PROCESS GROUNDS**

**DECLARATION OF LUCIUS B. LAU IN SUPPORT OF THE TOSHIBA
DEFENDANTS' JOINDER TO DEFENDANTS' JOINT MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS**

SELECT ACTION PLAN

MDL No. 1917

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

1 I, Lucius B. Lau, hereby declare as follows:

2 1. I am an attorney with the law firm of White & Case LLP, counsel for
3 Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Consumer
4 Products, LLC, Toshiba America Information Systems, Inc., and Toshiba America Electronic
5 Components, Inc. (collectively, the "Toshiba Defendants").

6 2. I submit this declaration in support of the Toshiba Defendants' Joinder to
7 Defendants' Joint Motion for Partial Summary Judgment Against Certain Direct Action
8 Plaintiffs On Due Process Grounds, filed contemporaneously herewith. I have personal
9 knowledge of the facts stated herein, and I could and would competently testify thereto if
10 called as a witness.

11 3. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the
12 transcript of the Rule 30(b)(6) deposition of Toshiba Corporation (Koji Kurosawa).

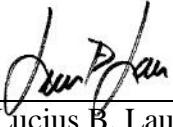
13 4. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the
14 transcript of the Rule 30(b)(6) deposition of TACP and TAIS (Richard Huber).

15 5. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt from the
16 transcript of the Rule 30(b)(6) deposition of TACP and Toshiba Corporation (Yoshiaki
17 Uchiyama).

18 6. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt from the
19 transcript of the Rule 30(b)(6) deposition of TAEC (Jay Heinecke).

20 I declare under penalty of perjury under the laws of the United States of America that
21 the foregoing is true and correct.

22
23 Executed this 7th day of November, 2014, in Washington, D.C.

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Lucius B. Lau

DECLARATION OF LUCIUS B. LAU IN SUPPORT OF THE TOSHIBA
DEFENDANTS' JOINDER TO DEFENDANTS' JOINT MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST CERTAIN DIRECT ACTION PLAINTIFFS ON DUE PROCESS GROUNDS

Case No. 07-5944-SC

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EXHIBIT 1

Sought To Be Sealed

EXHIBIT 2

Sought To Be Sealed

EXHIBIT 3

Sought To Be Sealed

EXHIBIT 4

Sought To Be Sealed